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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,275	08/05/2003	Michael E. Woolford	3616.111USC4	7063

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EXAMINER

NEUDER, WILLIAM P

ART UNIT	PAPER NUMBER
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3672

DATE MAILED: 03/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/634,275	WOOLFORD, MICHAEL E.	
	Examiner	Art Unit	
	William P. Neuder	3672	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 28-72 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-72 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/12/05</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 28-31,33-53 and 55-72 are rejected under 35 U.S.C. 102(b) as being anticipated by Guth 5795105.

Guth discloses a mortar less retaining wall block and a retaining wall formed from the blocks. The block has a front 12, a back 18, a top 10 and a bottom 8. The block also has sides 14,16. The block has insets 22A and 22B in the sides of the blocks that extend from the top to the bottom of the block. A locator protrusion 26 is formed integrally on the block top surface. The protrusion is adapted to fit within an inset of a block in an adjacent course of blocks (see figure 7). A plurality of blocks are stacked to form a wall. The locator protrusion has a generally forward-facing surface and a generally rearward-facing surface. In top plan view, the block body has a first front edge, a first rear edge, a first side edge and a second side edge (see figure 1). The first front edge extends from the first side edge to the second side edge and extends to the widest portion of the block body. The first rear edge extends from the first side edge to the second side edge. The first side edge includes a first converging portion and the second side edge includes a second converging portion that converge towards each other. The converging portions are oriented at an oblique angle relative to the first rear

edge. In front elevation view, the body has a first front surface and the first front edge corresponds to the widest portion of the front surface. In side elevation, the body has a second front edge, a second rear vertical edge, a top edge and a bottom edge. The locator protrusion 26 projects above the top edge. The bottom edge extends from the second front edge to the second rear edge and is generally horizontal and generally lies in a straight line. As to claim 29, in top plan view, each side edge has an inset portion 22A, 22B corresponding to the inset in the first or second side of the body. The inset portion having a forward edge portion and a rearward edge portion. The forward edge portion being spaced from the rearward edge portion and positioned closer to the first front edge. In side elevation, the locator protrusion includes a forward most edge corresponding to the forward-facing surface of the protrusion and a rearward most edge corresponding to the rearward-facing surface of the protrusion. The maximum front-to-back dimension, in side elevation, between the forward most and rearward most edge of the protrusion is smaller than the maximum front-to-back dimension, in plan view, between the forward and rearward edge of the insets. When a plurality of blocks are stacked portions of the insets and protrusion contact each other in a shear-resisting manner in which interference between the protrusion and inset resists the tendency of an upper course block to slide forwardly. As to claims 30 and 52, the locator protrusion and insets are shaped to permit relative rotation of the insets and protrusion to facilitate the construction of serpentine walls while maintaining the shear-resisting position. As to claims 31 and 53, the body has an opposed pair of legs extending from the first and second sides. The legs comprise third and fourth rear edges. The first, third and fourth

edges lie in a straight line. As to claims 33 and 55, a single protrusion 26 is provided. As to claims 34 and 56, the protrusion comprises two lobes and a narrowed portion between the lobes. As to claims 35 and 57, the protrusion is formed on the body at a location relative to the insets so that when blocks are stacked, the protrusion and insets are positioned in shear-resisting position. As to claims 36 and 58, the body has an open core 30 extending through the block. As to claims 37 and 59, in top plan view, the first front edge is a single segment. As to claims 38,40,60 and 62, the segment is straight. As to claims 39,41,61 and 63, the first front edge can comprise more than one segment. As to claims 42 and 64, the first front edge and the second front edge are irregular. As to claims 43-46 and 65-68, the irregularity is caused by a block-splitting process that also causes a decorative feature. As to claim 47, the bottom edge lies on a straight line. As to claims 48 and 69, protrusion 26 has a curved side configured to contact an inset of an adjacent block in a shear-resisting manner. As to claims 49 and 70, the forward edge portions of the insets are generally parallel to the first front edge. As to claims 50,71 and 72, the converging portions extend between the first front edge and the forward edge.

Claims 28-31,33-53 and 55-72 are rejected under 35 U.S.C. 102(b) as being anticipated by Anchor Wall WO 94/08097.

Anchor discloses a mortar less retaining wall block and a retaining wall formed from the blocks. The block has a front 12, a back 18, a top 10 and a bottom 8. The block also has sides 14,16. The block has insets 22A and 22B in the sides of the blocks that extend from the top to the bottom of the block. A locator protrusion 26 is formed

integrally on the block top surface. The protrusion is adapted to fit within an inset of a block in an adjacent course of blocks (see figure 7). A plurality of blocks are stacked to form a wall. The locator protrusion has a generally forward-facing surface and a generally rearward-facing surface. In top plan view, the block body has a first front edge, a first rear edge, a first side edge and a second side edge (see figure 1). The first front edge extends from the first side edge to the second side edge and extends to the widest portion of the block body. The first rear edge extends from the first side edge to the second side edge. The first side edge includes a first converging portion and the second side edge includes a second converging portion that converge towards each other. The converging portions are oriented at an oblique angle relative to the first rear edge. In front elevation view, the body has a first front surface and the first front edge corresponds to the widest portion of the front surface. In side elevation, the body has a second front edge, a second rear vertical edge, a top edge and a bottom edge. The locator protrusion 26 projects above the top edge. The bottom edge extends from the second front edge to the second rear edge and is generally horizontal and generally lies in a straight line. As to claim 29, in top plan view, each side edge has an inset portion 22A, 22B corresponding to the inset in the first or second side of the body. The inset portion having a forward edge portion and a rearward edge portion. The forward edge portion being spaced from the rearward edge portion and positioned closer to the first front edge. In side elevation, the locator protrusion includes a forward most edge corresponding to the forward-facing surface of the protrusion and a rearward most edge corresponding to the rearward-facing surface of the protrusion. The maximum front-to-

back dimension, in side elevation, between the forward most and rearward most edge of the protrusion is smaller than the maximum front-to-back dimension, in plan view, between the forward and rearward edge of the insets. When a plurality of blocks are stacked portions of the insets and protrusion contact each other in a shear-resisting manner in which interference between the protrusion and inset resists the tendency of an upper course block to slide forwardly. As to claims 30 and 52, the locator protrusion and insets are shaped to permit relative rotation of the insets and protrusion to facilitate the construction of serpentine walls while maintaining the shear-resisting position. As to claims 31 and 53, the body has an opposed pair of legs extending from the first and second sides. The legs comprise third and fourth rear edges. The first, third and fourth edges lie in a straight line. As to claims 33 and 55, a single protrusion 26 is provided. As to claims 34 and 56, the protrusion comprises two lobes and a narrowed portion between the lobes. As to claims 35 and 57, the protrusion is formed on the body at a location relative to the insets so that when blocks are stacked, the protrusion and insets are positioned in shear-resisting position. As to claims 36 and 58, the body has an open core 30 extending through the block. As to claims 37 and 59, in top plan view, the first front edge is a single segment. As to claims 38,40,60 and 62, the segment is straight. As to claims 39,41,61 and 63, the first front edge can comprise more than one segment. As to claims 42 and 64, the first front edge and the second front edge are irregular. As to claims 43-46 and 65-68, the irregularity is caused by a block-splitting process that also causes a decorative feature. As to claim 47, the bottom edge lies on a straight line. As to claims 48 and 69, protrusion 26 has a curved side configured to

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contact an inset of an adjacent block in a shear-resisting manner. As to claims 49 and 70, the forward edge portions of the insets are generally parallel to the first front edge. As to claims 50, 71 and 72, the converging portions extend between the first front edge and the forward edge.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 32 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guth or Anchor Wall (both described above) in view of Mullins 4107894.

Both Guth and Anchor Wall both disclose only one protrusion. While applicant does not set forth any criticality of more than one protrusion, Mullins teaches that it is known to use multiple protrusions to interlock retaining wall blocks when stacked. It would have been considered obvious to provide Guth or Anchor Wall with multiple protrusions as taught by Mullins since the number of protrusions would be subject to design configurations and no criticality of the number of protrusions has been set forth.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Neuder whose telephone number is 571-272-7032. The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David J. Bagnell can be reached on 571-272-6999. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



William P Neuder  
Primary Examiner  
Art Unit 3672

W.P.N.